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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ASIA: Council should do more to end extrajudicial execution

1. Despite having some of the most stable and rapidly developing countries in the world, Asia is notorious for extrajudicial executions. Both state and non-state actors commit these crimes. As in all human rights abuses committed by state agencies, when it comes to extrajudicial executions, Asian states lack prompt and independent investigation and adjudication modalities.
2. This written submission refers to conditions in Bangladesh, Myanmar, Cambodia, People's Republic of China, India, Indonesia, Nepal, Pakistan, Thailand, and the Philippines; it does not refer to the jurisdictions of the Republic of Korea, Japan, and Hong Kong, which are comparable in accountability to countries that can take pride in their rule of law regimes.
3. In the former list of countries, the normative framework of the rule of law does not exist. The practice of torture, which often relates to deaths in custody or extrajudicial executions, is common to these states. The central deficit in state policy – that results in an alarming number of extrajudicial executions committed by state agencies – is the unwillingness of these states to change the institution of police from state-sponsored terror creating machines to those that provide services to all citizens.
4. In all the states in question, extrajudicial executions are also committed by non-state actors, some of which have political front organisations that participate in running the government in their respective countries. In countries like Bangladesh, Indonesia, and Pakistan, fundamentalist religious organisations also engage in an alarming number of extrajudicial executions. In the Philippines non-state actors like the Abu Sayyaff group targets political as well as human rights defenders. Such executions do not have the possibility of proper documentation; documenting such cases, or even speaking about them, places civil society members at high risk. In Pakistan and Indonesia, some areas are totally controlled by non-state actors that have formed parallel governments. Here justice is that which is dictated by the power of the non-state ruler.
5. Extrajudicial executions manifest rooted problems within the law enforcement and criminal justice machineries of these states. Statutory impunity provided to state agencies to undertake extrajudicial executions, under the guise of national security, has resulted in an alarming hike in extrajudicial executions in all the states. Such legislations, generically termed as security legislations, or emergency provisions, or terrorist prevention laws, are enacted and promulgated often without national and parliamentary debate.
6. Extrajudicial executions are on the increase post September 2001. The declaration of the 'war on terror' has translated into arbitrary arrests, prolonged and secret detentions, excessive use of torture, all of it leading often into extrajudicial executions. States in the region have adopted without challenge, extrajudicial executions, as means with which anti-state activities are dealt with impunity.
7. These laws transform a state agency into a hydra-headed entity that engages in accusation, investigation, prosecution, adjudication, and execution of sentences. When security legislations empower law enforcement officers to shoot to kill civilians with impunity even the barrier of individual hesitation is removed. It is only natural that when statutory impunity with unbridled powers are provided to state agents as low ranking as police constables or soldiers in the army deployed internally to "deal with" threats against the state for which the officer is licensed to kill, the number of extrajudicial executions becomes very high. The culture of a lack of accountability, a lack of respect for human rights, and impunity has further fuelled the atmosphere of corruption and demoralisation among security agencies in Asia.
8. One of the first casualties of enforcing a regime of impunity by way of a statute is the principle of fair trial. All security legislations that provide statutory impunity to law enforcement agencies to engage in extrajudicial executions oust the jurisdiction of the civilian courts. In essence, extrajudicial execution flourishes in environments where law enforcement agencies are already demoralised due to the prevailing circumstances of impunity and non-accountability. All the states in question have such conditions prevailing within their territories.

9. Where the state fails to maintain the rule of law and make its agencies accountable through a fair trial procedure, it lacks the morality and voice to speak against armed, militant, secessionist, and religious fundamentalist groups that also engage in extrajudicial execution. The result in Asia is a security paralysis, deep demoralisation, and instability.
10. Each of the countries above has witnessed thousands of cases of extrajudicial execution in the past decade. Commissions of inquiry, constituted to investigate extrajudicial executions after domestic and international political pressure, which were successful in completing their mandate in each of these states, have found no further relevance beyond the submission of an inquiry report, since governments have not adequately acted upon these reports.
11. Ending extrajudicial execution in Asia requires strong domestic institutions that are capable of discharging their mandate of upholding the rule of law. The judiciary in Asia is unfortunately one of the weakest institutions of the state. In countries where the judiciary has remained strong since the beginning of the post-colonial era, judicial activism and intervention have largely remained within the law books and journals, as against the possibility of its true realisation for ordinary people in their daily lives.
12. Extrajudicial execution in Asia can be only addressed if Asian states have the resolve to establish regimes based on the rule of law, replacing regimes based on the rule by fear that exist today. This will require the Asian states to have the moral capacity to take a political decision that, irrespective of all denominators such as religion, region, race, and even political affinities, each life within their jurisdictions will be protected and preserved at all costs. This calls for a paradigm shift in the existing debate on Asia into one that focuses on the failure and incapacity of national institutions expected to maintain the rule of law.
13. It requires the international community's commitment to discuss criminal institution reforms in Asia, to focus attention on the need to overhaul policing systems, end the culture of impunity, prohibit torture, reduce judicial delays, refine the prosecutorial apparatus, and ultimately end the culture of political corruption rampant in Asia. The fact that South Korea, Japan, and Hong Kong are examples where such change has been successfully achieved, shows that criminal justice institution reforms are not a utopia but a real possibility, provided there is adequate encouragement for national and international debate about this essential requirement.
14. The United Nations Human Rights Council, a vital global institution, can initiate such a discussion. This will require the United Nations and its manifold specialists to try and understand more deeply the hindrances that cause rule of law paralysis in Asia. Discussion forums like the Council and its experts must be more critical of Asian realities.
15. This implies that instead of merely asking Asian governments to 'investigate, prosecute and adjudicate' human rights abuses, the Council, as an international body primarily concerned with protecting and promoting human rights globally, should engage with Asian states with a view to establish rule of law guaranteeing institutions therein. This will involve encouraging thorough reforms of criminal justice institution and their policies to replace the façade these states have created with institutions that breathe life into human rights guarantees that the Asian states are bound to protect through domestic and international law obligations. This will substantially reduce, if not completely end, extrajudicial executions in Asia.
16. Anything short of this will not render results.